

DECISION

examined

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

27471

FILE: B-212938**DATE:** February 22, 1984**MATTER OF:** Future Electric Company**DIGEST:**

Where discrepancy exists between legal entity shown on the bid and legal entity shown on the bid bond and it is not possible to conclude from the bid itself that the intended bidder was the same legal entity as the named principal on the bid bond, bid was properly rejected as nonresponsive since bid as submitted is, at best, ambiguous.

Future Electric Company (Future Electric) protests the rejection of its bid under invitation for bids (IFB) No. GS-06B-2430 issued by the General Services Administration (GSA) for main switchboard alterations at the United States Court and Customs House, St. Louis, Missouri. GSA determined that Future Electric's bid was nonresponsive because there was a discrepancy between the legal entity shown on the bid and the legal entity shown on the bid bond. For the reasons discussed below, we deny the protest.

The IFB required a bid guarantee in the form of a bid bond and the solicitation further provided that the failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, might be cause for rejection of a bid.

Future Electric was the low bidder. In the signature block on Future Electric's bid appeared the name Future Electric Company and the signature of Stephen Anthony Kirby, president. Also, on Standard Form 19-B, "Representations and Certifications," under "Type of Organization," Future Electric checked the box beside the word "corporation." However, on pages 1 and 3 of the solicitation, the name of the bidder was identified as Future Electric Company and Douglas Kirby, a joint venture.

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The bid bond, which referenced the IFB number, identified its principal as Future Electric Company and Douglas Kirby, a joint venture. In the signature block for the principal appeared the signature of "Stephen A. Kirby, president," followed by the corporate seal of the Future Electric Company. In the space entitled "Type of Organization," appearing in the upper right corner of the bid bond, the word "corporation" was checked.

By letter dated August 25, the contracting officer notified Future Electric that its bid was being rejected as nonresponsive because of the discrepancy between the bidder and the principal shown on the bid bond. GSA awarded the contract to the second low bidder.

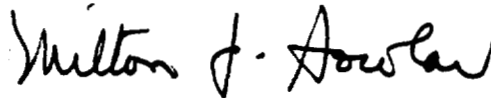
Future Electric argues that the rejection of its bid by GSA was improper because the Future Electric Company was the bidder and that a sufficient bid bond in the name of Future Electric Company alone was furnished.

Bid bond requirements are a material part of the IFB which the contracting officer cannot waive. See 52 Comp. Gen. 223 (1972); 50 Comp. Gen. 530 (1971). Thus, a bid bond which names a principal different from the nominal bidder is deficient and the defect may not be waived as a minor informality. A. D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts or perform the duty of another unless he expressly agrees to be bound. See Hoyer Construction Company/K. D. Hoyer, a Joint Venture, B-183096, March 18, 1975, 75-1 CPD 163; ATLAS Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, January 19, 1983, 83-1 CPD 69.

GSA argues that Future Electric's bid as submitted is, at best, ambiguous and confusing as to the real party in interest. While we have found bids responsive where the bid bond named different principals in cases where we were able to conclude from the bid itself that the intended bidder was the same legal entity as the named principal on the bid bond, see Hoyer Construction Company/K.D. Hoyer, a Joint Venture, supra, we are unable to make such a determination here. Although Future Electric asserts that Future Electric Company was the intended bidder and that a bid bond in the name of Future Electric Company was furnished, we note that the record contains a letter from the bonding company which indicates that the bid bond was

approved based on a joint venture submission rather than in the name of Future Electric Company alone. In our view, the bid itself is ambiguous as to the real bidding party. Since the principal on the bid bond is identified as Future Electric Company and Douglas Kirby, a joint venture, and since it is not clear as to whether the joint venture was also the bidder, the bid was properly rejected.

The protest is denied.

A handwritten signature in dark ink, reading "Milton J. Fowler". The signature is written in a cursive, slightly slanted style.

Acting Comptroller General
of the United States